

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS--EASTERN DIVISION**

84 Lumber Company, a Pennsylvania Limited Partnership)
)
)
 No. 08CV-958
-vs-)
)
Boss Construction, Inc. and Steven Roger Smith)
)
)
 Defendant(s).)

AFFIDAVIT OF BRENDA TORRI

NOW COMES Brenda Torri, and having been first duly sworn states the following under oath:

1. That the Affiant is over the age of 21, under no legal disability, and if called upon to testify at the trial of this lawsuit would testify in accord with this Affidavit.
2. That the Affiant is the Legal Assistant of the Plaintiff, 84 Lumber Company, a Pennsylvania Limited Partnership,
3. That in my capacity as Legal Assistant I keep in my custody and control the account receivable records for the Plaintiff.
4. That amongst those records are the account receivable records for Defendant, Boss Construction, Inc.
5. That Exhibit "A" attached is a certain credit application for Boss Construction, Inc. executed by its President, Steven Smith.
6. That also attached as Exhibit "B" is an itemized summary statement of account for the account of Defendant, Boss Construction, Inc.
7. That the summary statement of account summarizes some 100 invoices for materials sold and delivered to the Defendant, Boss Construction, Inc., and said summary and the invoices in support thereof kept under my custody and control are records kept in the ordinary course of business of the Plaintiff.
8. That in accord with those records, there is a principal balance due and owing from the Defendant to the Plaintiff of \$103,880.85.
9. That said account has been duly guaranteed by the Defendant, Steven Roger Smith, as per the Credit Application.
10. That after giving the Defendant credit for all payments on account, there is a principal balance due and owing from the Defendant to the Plaintiff of \$103,880.85



11. That as per the terms of the Credit Application, Plaintiff is entitled to interest on the unpaid balance at the rate of 18% from January 1, 2008 to the date of the hearing of this motion which comes to \$4,500.00, plus reasonable attorneys' fees which the Plaintiff's claims to be \$2,500.00.

FURTHER, THE AFFIANT SAYETH NAUGHT.

SIGNED AND SWORN TO BEFORE
ME THIS 29 DAY OF April, 2008.


Amy L. CRISS
NOTARY PUBLIC

Brenda Torri

Name: Brenda Torri
Position: Legal Assistant

Commonwealth of Pennsylvania

NOTARIAL SEAL

AMY L. CRISS, Notary Public
City of Eighty Four, County of Washington
My Commission Expires November 14, 2009

YPR-20-2007 10:56 FROM BOSS CONSTRUCTION 16157869931

TO1632 789 4841

P.1/1

CONTRACTOR - COMMERCIAL CREDIT APPLICATION



(Please Print in CAPITAL LETTERS)

APR 23 2007

CREDIT DEPARTMENT

NET 60 DAYS

FOR STORE/OFFICE USE ONLY

Store Name:	0811
Store Number:	1690
Area Number:	

Applicant/Business Name:	BOSS CONSTRUCTION			Phone: (315) 726-1100
Business Address:	1404 GARRET CT			Fax: (315) 726-8931
City, State, Zip Code:	NEW LEBENK, IL 60451			E-mail:
Billing Address:	SAME			<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
Previous Business Address:				Name of other Partner or Vice President:
Name of Owner, General Partner or President:	STEVE SMITH			Social Security Number:
Social Security Number:				Address:
Address:	1904 GARRET CT			City, State, Zip Code:
City, State, Zip Code:	NEW LEBENK, IL 60451			Previous Address:
Previous Address:	(If less than one year at present address, include previous)			
Date Business Started:	4/1/96	State of Incorporation:	IL	Fed. Tax ID#:
Type of Business:	<input type="checkbox"/> General Contractor <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Remodeler <input type="checkbox"/> Other:			Number of homes built in the last 3 years:
Operations:	<input type="checkbox"/> Speculation <input type="checkbox"/> Contract			% Expected monthly credit utilization \$:
Number of years home building experience:				Title/Position/Duties:
Financial Statement required? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you ever filed for Bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, When?		
BANK REFERENCES				
Primary Bank:	PRIVATE BANK		Review	Tel: (208) 599-0402
Type of Account: Checking Account No.:	H.E.S.		Savings Account No.:	Phone No.:
Officer to Contact:	DARL DEXTER		Line of Credit Amount \$:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured
Secondary Bank:			Line of Credit Amount \$:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured
Type of Account: Checking Account No.:			Savings Account No.:	Phone No.:
Officer to Contact:			Line of Credit Amount \$:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured
PRINCIPAL TRADE REFERENCES				
Primary Bid. Name:	NAME: WHOLESALE		STREET/CITY/STATE/ZIP: Hwy 141 HILLS, IL	PHONE: (708) 599-9770
Secondary Bid. Name:	HOME DEPOT		DES MOINES, IA	PHONE: 494-1946
Concrete Store Bid. Name:	B. CHURCH'S		JCT, IL	PHONE: 464-7253
Other Trade:				

MUST HAVE MINIMUM OF FOUR TRADE REFERENCES

BY SIGNING BELOW I HEREBY CERTIFY THAT I AM THE OWNER, GENERAL PARTNER OR PRESIDENT OF THE ABOVE BUSINESS, AND I DO UNCONDITIONALLY AND IRREVOCABLY PERSONALLY GUARANTEE THIS CREDIT ACCOUNT AND PAYMENTS OF ANY AND ALL AMOUNTS DUE BY THIS ABOVE BUSINESS, AND THAT I HAVE READ ALL OF THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS APPLICATION AND UNDERSTAND AND AGREE TO THE SAME, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. (APPLICATION MUST BE FULLY COMPLETED, SIGNED AND WITNESSED.)

X Witness

X Applicant *Steve Smith*

Date 4/18/07

X Witness

X Applicant *Steve Smith*

Date 4/18/07

Print Name: STEVE SMITH
 (If Applicant is a Partnership, then general Partner must sign the application.
 If Applicant is a corporation, then President must sign the application.)

REV. 8/00

T/T



APR-20-2007 1114 84 Lumber 6307594641

CONTRACTOR - COMMERCIAL CREDIT AGREEMENT TERMS AND CONDITIONS

Applicant and Personal Guarantor(s) signing this Contractor - Commercial Credit Application ("Application") agree to accept credit extended by 84 Lumber Company and its affiliates and subsidiaries, including but not limited to 84 Components (collectively referred to herein as "84") subject to the following terms and conditions:

1. A NUMBER INVOICE SHALL BE FURNISHED WITH EACH PURCHASE. THE CUT-OFF DATE FOR MONTHLY BILLING IS THE TWENTY-FIFTH (25TH). A BILL/STATEMENT OF THE TRANSACTIONS WILL BE SENT TO APPLICANT AND MUST BE PAID IN FULL NO LATER THAN THE TENTH (10TH) OF THE MONTH NEXT FOLLOWING THE CUT-OFF DATE; A FINANCE/LATE CHARGE WILL BE ASSESSED AT 1.5% PER MONTH, WHICH IS 18% PER ANNUM, ON THE BALANCE THAT IS PAST DUE;
2. Applicant Agrees to grant and 84 is retaining a Purchase Money Security Interest under the Uniform Commercial Code on the building materials purchased on Applicant's account until such building materials are paid for in full;
3. All billing errors must be reported to the 84 Credit Department in writing within thirty (30) days after 84 has sent Applicant the first statement on which the error appears. Applicant agrees to immediately notify the 84 Credit Department in writing of any unauthorized purchases on Applicant's account;
4. 84 shall have the right to rely upon all reasonable representations of persons representing themselves to be agents of Applicant as to authority to make purchases on Applicant's account unless the 84 Credit Department receives prior written notification from Applicant limiting agents authorized to make purchases;
5. Applicant agrees to have an agent at job sites to sign invoices or bills of lading. Failure to do so will constitute a legal acceptance by Applicant of building materials delivered even though no invoice or bill of lading has been signed. Applicant must notify the applicable 84 store in writing of all claims for errors, shortages, damages and defects within twenty-four (24) hours of delivery;
6. Applicant agrees to furnish the applicable 84 store with an address and legal description for each job site where purchased building materials are used;
7. 84 has the right to close Applicant's account at any time, with or without cause, change the terms and conditions or sell, assign or transfer Applicant's account upon written notification to Applicant from the 84 Credit Department. Applicant agrees to notify the 84 Credit Department in writing of Applicant's desire to close Applicant's account, change of address, ownership, company name or change in legal business status;
8. IF THIS ACCOUNT IS PLACED FOR COLLECTION, APPLICANT AND PERSONAL GUARANTOR(S) AGREE TO PAY 84 REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS FOR MECHANIC'S LIENS;
9. Applicant and Personal Guarantor(s) hereby authorize any and all banks, credit reporting agencies, principal trade references listed on this Application, or any other credit source available to furnish credit information to 84. Applicant gives 84 permission to furnish business solicitation information about Applicant to third parties;
10. Applicant agrees that any credit extended hereunder is strictly commercial credit and does not arise out of a consumer transaction and is therefore not governed by applicable federal or state consumer credit regulations;
11. The entire agreement of the parties is set forth in this written document and there are no other oral or written understandings, promises, representations or agreements. This Agreement cannot be modified or amended except by a written document signed by both Applicant and the 84 Credit Department; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This Agreement shall take precedence, supersede and control over any conflicting or additional terms contained in purchase orders, contracts or other similar documents issued or executed by the parties and no such documents shall be binding upon 84 unless approved and signed by an authorized officer of 84. Applicant understands and agrees that except for an authorized officer, no employees of 84 have the authority to sign contracts on behalf of 84. In the event that an 84 employee signs a contract with Applicant, such document shall not constitute a binding or valid contract unless later approved in writing by an authorized officer of 84;
12. The waiver or invalidity of any provision herein shall not affect the validity of any other provision herein;
13. In no event shall 84 be liable for liquidated, incidental, punitive or consequential damages in connection with building materials or installation purchased by Applicant. 84 disclaims any express or implied warranties of merchantability or fitness for a particular purpose on building materials or installation purchased by Applicant. In no event shall 84's liability exceed the replacement cost of building materials or installation.
14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania;
15. With the exception of actions by 84 to enforce liens or collect past-due amounts, 84 and Applicant agree that all disputes arising out of or relating to this Agreement, including but not limited to claims relating to building materials or installation, shall be settled by final and binding arbitration in Pittsburgh, Pennsylvania in accordance with the Construction Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof;
16. JURY WAIVER. APPLICANT AND GUARANTOR(S) EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY TRANSACTIONS CONTEMPLATED HEREBY;
17. All written notices to 84 by Applicant required under this Agreement shall be sent Certified Mail - Return Receipt Requested to: 84 Lumber Company, Credit Department, Building #2, 1019 Route 519, Eighty Four, Pennsylvania 15330-3810;
18. Applicant agrees not to withhold, setoff, deduct or retain payment against amounts due 84 on this Account for any alleged claims or charges.

BOSS CONSTRUCTION

			Account:	0811 0650 000	Start Date:	01/01/07					
Invoice Number	Store	Sub Acct	N/A W/O	Sale Date	Sale Amount	Finance Charges	Invoice Number	Check Number	Payment Date	Payment Amount	Balance
181428	0811	000		04/27/2007	2,203.03						2,203.03
181450	0811	000		04/30/2007	229.54						2,432.57
181457	0811	000		04/30/2007	59.12						2,491.69
181461	0811	000		04/30/2007	1,002.07						3,492.76
181462	0811	000		04/30/2007	693.14						4,185.90
181474	0811	000		05/01/2007	1,772.40						5,958.30
181506	0811	000		05/02/2007	3,182.13						9,140.43
181513	0811	000		05/02/2007	327.02						9,467.45
181532	0811	000		05/03/2007	177.43						9,644.88
181502	0811	000		05/03/2007	5,417.16						15,062.04
181568	0811	000		05/07/2007	2,341.90						17,403.94
181524	0811	000		05/07/2007	719.28						18,123.22
181530	0811	000		05/07/2007	235.27						18,358.39
181704	0811	000		05/10/2007	1,275.49						19,633.88
181720	0811	000		05/10/2007	522.30						20,156.58
181788	0811	000		05/14/2007	182.37						20,339.35
181789	0811	000		05/14/2007	74.92						20,414.27
181721	0811	000		05/14/2007	91.38						20,505.65
181795	0811	000		05/14/2007	301.27						20,806.92
181800	0811	000		05/14/2007	2,813.13						23,620.05
181809	0811	000		05/15/2007	1,893.93						25,523.98
181815	0811	000		05/15/2007	2,377.77						27,991.75
181826	0811	000		05/15/2007	1,302.57						28,994.32
181830	0811	000		05/15/2007	624.40						29,618.72
181864	0811	000		05/16/2007	761.92						30,400.64
181872	0811	000		05/16/2007	310.08						30,710.72
181873	0811	000		05/17/2007	372.56						31,083.28
181915	0811	000		05/18/2007	815.54						31,898.82
181927	0811	000		05/19/2007	57.94						31,956.76
181939	0811	000		05/19/2007	702.12						32,658.98
181986	0811	000		05/21/2007	2,644.45						35,303.33
181993	0811	000		05/21/2007	150.91						35,454.24
181994	0811	000		05/21/2007	715.56						36,169.80
182032	0811	000		05/22/2007	-447.89						35,721.91
182033	0811	000		05/22/2007	2,892.73						38,613.62
182049	0811	000		05/24/2007	1,656.80						40,270.42
182052	0811	000		05/24/2007	164.78						42,342.22
182094	0811	000		05/24/2007	1,682.11						43,424.33
182099	0811	000		05/25/2007	1,4,779.56						56,203.99
182132	0811	000		05/29/2007							

PLAINTIFF'S
EXHIBIT
Torr.

BOSS CONSTRUCTION									
		Account: 0811 0690 000		Start Date: 01/01/07					
Invoice Number	Store	Sub Acct	%/A W/O	Sale Date	Sale Amount	Finance Charges	Invoice Number	Check Number	Payment Date
182134	0811	000		05/23/2007	192.17				
182145	0811	000		05/29/2007	29.93				
182147	0811	000		05/29/2007	603.45				
182150	0811	000		05/29/2007	785.02				
182157	0811	000		05/29/2007	34.54				
182259	0811	000		05/29/2007	131.14				
182215	0811	000		05/31/2007	-798.00				
182216	0811	000		05/31/2007	592.23				
182217	0811	000		05/31/2007	348.39				
182225	0811	000		05/31/2007	-738.66				
705601	0811	000		06/01/2007	2,555.68	Tut/Fin			
182247	0811	000		06/01/2007	291.19				
182248	0811	000		06/01/2007	2,324.19				
0811	000				181506	29962	06/04/2007	3,182.13	
					181935	29962	06/04/2007	815.54	
182292	0811	038		06/04/2007	543.95				
182295	0811	000		06/04/2007	59.07				
182308	0811	000		06/04/2007	137.90				
182308	0811	000		06/05/2007	-161.04				
182316	0811	044		06/05/2007	216.95				
182317	0811	000		06/05/2007	280.88				
182330	0811	000		06/05/2007	269.91				
182337	0811	000		06/05/2007	293.10				
182359	0811	000		06/07/2007	1,053.71				
182366	0811	000		06/07/2007	1,420.64				
182369	0811	000		06/07/2007	2,754.21				
182371	0811	000		06/07/2007	3,486.20				
182386	0811	000		06/07/2007	963.20				
182394	0811	000		06/07/2007	900.14				
182412	0811	000		06/08/2007	1,577.03				
182426	0811	000		06/08/2007	379.37				
182432	0811	000		06/08/2007	174.55				
182433	0811	000		06/08/2007	-38.83				
182437	0811	000		06/08/2007	159.23				
6019369	0811	000		06/08/2007	.90				
182496	0811	000		06/12/2007	366.67				
182497	0811	000		06/12/2007	-58.79				
182503	0811	000		06/13/2007	1,979.87				
182510	0811	000		06/13/2007	110.66				
182511	0811	000		06/13/2007	110.66				
182512	0811	000		06/13/2007	370.92				

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02/13/08 11:53 AM ACCOUNT HISTORY REPORT

BOSS CONSTRUCTION

PAGE 4

		Account: 0811 0820 000		Start Date: 01/01/07						
Invoice Number	Sub Account	Sub Acct	Sale Date	Sale Account	Finance Charges	Invoice Number	Check Number	Payment Date	Payment Amount	Balance
18004	0826	000	07/07/2007		-72.76					\$4,540.57
18005	0826	000	07/07/2007		-98.39					\$4,442.18
18006	0826	000	07/07/2007		-202.30					\$4,239.88
18007	0826	000	07/09/2007		2,603.14					\$6,843.02
18019	0826	000	07/09/2007		-122.72					\$6,720.30
18020	0826	000	07/09/2007		4,565.34					201,389.64
18021	0826	000	07/09/2007		1,835.37					103,225.01
18052	0826	000	07/09/2007		2,021.94					105,246.95
18072	0826	000	07/10/2007		2,053.37					107,390.32
18080	0826	000	07/16/2007		605.49					107,996.81
18081	0826	000	07/16/2007		2,257.12					110,163.93
18118	0826	000	07/11/2007		37.19					110,202.12
18236	0826	000	07/15/2007		1,775.47					111,976.59
18252	0826	000	07/16/2007		-227.38					111,749.21
18346	0826	000	07/18/2007		-105.19					111,644.02
08111	000					181461	30288	07/08/2007	1,003.03	110,642.95
08111	600					181513	30289	07/18/2007	327.02	110,315.93
08111	000					181532	30285	07/18/2007	177.43	110,138.50
08111	000					181624	30289	07/19/2007	719.28	109,419.22
08111	000					181630	30289	07/19/2007	235.17	109,184.05
08113	000					181789	30288	07/18/2007	74.92	109,109.13
08111	000					182099	30289	07/18/2007	1,082.11	108,027.02
18510	0826	000	07/24/2007		3,040.58					107,635.34
18521	0826	000	07/24/2007		-49.73					110,915.62
08111	000					181474	4524	07/26/2007	1,772.40	109,093.49
08111	000					182357	30366	07/25/2007	292.70	109,300.79
08111	000					182496	30366	07/25/2007	366.67	108,434.12
08001	0826	000	07/30/2007		235.61					108,383.95
08001	0826	000	08/01/2007		1,162.67	Int/FIN				109,732.23
08111	000					182090	30327	10/01/2007	224.33	108,553.90
08111	000					182150	30327	10/01/2007	745.32	108,768.48
08111	000					182159	30727	10/01/2007	134.14	108,530.74
08111	000					182295	30727	10/01/2007	59.97	108,561.67
08112	000					182295	30727	10/01/2007	137.00	108,424.67
08111	000					182316	30727	10/01/2007	216.95	108,203.72
08111	000					182317	30727	10/01/2007	280.85	108,926.84
08111	000					182330	30727	10/01/2007	265.91	107,656.93
08111	000					182511	30509	10/22/2007	110.66	107,546.27
08111	000					182513	30509	10/22/2007	140.41	107,405.86
08111	000					182134	30931	10/24/2007	192.17	107,213.69
08226	000					179881	31027	11/16/2007	294.62	105,919.67

*** TOTAL PAGE. 07 ***

B4 LONGER COMPANY		ACCOUNT HISTORY REPORT				PAGE 5	
		BOSS CONSTRUCTION					
		Account: 0811 0000 000				Start Date: 01/01/07	
Invoice Number	Sub Account	W/H#	Sale Date	Sale Amount	Finance Charges	Invoice Number	Check Number
0811 000	000					31064	11/19/2007
0811 000	000					181738	11/23/2007
0811 000	000					31065	11/23/2007
0811 000	000					182437	31065
0811 000	000					181729	12/03/2007
0811 000	000					181672	31119
0811 000	000					181993	12/03/2007
0811 000	000					312513	311179
0811 000	000					182507	12/03/2007
0811 000	000					182469	31116
0811 000	000					182615	311289
0811 000	000					182623	311180
0811 000	000					181791	4660
0811 000	000					182345	4660
0811 000	000					182531	4660
0811 000	000					182543	4660
0811 000	000					182767	4660
0811 000	000					182777	4660

Invoice Number	Sub Account	W/H#	Sale Date	Sale Amount	Finance Charges	Invoice Number	Check Number	Payment Date	Payment Amount	Balance
31064			11/19/2007			324.79		106,594.28		
181738			11/23/2007			182.77		106,411.51		
31065			11/23/2007			159.23		106,252.28		
182437			31065			522.76		105,729.58		
181729			12/03/2007			310.68		105,419.50		
181672			31119			150.91		105,268.59		
181993			12/03/2007			98.93		105,170.53		
312513			311179			105,075.63				
182507			12/03/2007			14.51				
182469			31116			69.07				
182615			12/03/2007			621.52				
182623			311180			91.38				
181791			4660			29.03				
182345			4660			205.33				
182531			4660			22.58				
182543			4660			81.70				
182767			4660			59.66				
182777			4660			103,886.85				